known for the purpose of this Act as a "Disciplinary Committee", from among advocates and solicitors of not less than seven years' standing and having valid practising certificates.

Provided that no advocate and solicitor who is a member of the Inquiry Committee or has been involved in the inquiry or investigation of the complaint which has led to the making of the aforesaid application shall be appointed.

(3) The Chief Justice may at any time revoke the appointment of or remove any member of a Disciplinary Committee or fill any vacancy in a Disciplinary Committee.

Again in this case I am of the view that the wordings of s. 99(1) would give the meaning that the period of 14 days must be intended to be mandatory. However, in view of subsection (3) of s. 99 of the Act, the fact that the Chief Justice in this case took more than 5 months to appoint the present Disciplinary Committee does not mean that he had not appointed the Disciplinary Committee within the 14 days. There might have been revocations and substitutions of members of the Disciplinary Committee before the present Disciplinary Committee was finally approved and appointed.

I find that under s. 98 of the Act, the Bar Council must make its determination within 6 weeks of the receipt of the report mentioned in ss. 96 and 97, and if it determines a formal inquiry is necessary, it must forthwith apply to the Chief Justice to appoint a Disciplinary Committee to conduct a formal inquiry. I also find that in this case, the Bar Council applied to the Chief Justice to appoint the Disciplinary Committee after the period of 6 weeks. Since the mandatory period of 6 weeks prescribed by s. 98 has not been complied with by the Bar Council, its application to the Chief Justice under s. 98(b), and the subsequent appointment of a Disciplinary Committee by the Chief Justice, are rendered invalid, null and void.

I therefore made the orders declaring:

1) that the time frames provided for in ss. 98 and 99 of the Legal Profession Act 1976, are mandatory
2) that on the facts, the appointment of the Disciplinary Committee is invalid, null and void ,
3) Costs to plaintiff by respondent No. 1.

KANG MOI LAN @ KANG HOI LAN

v.

KANG AH LANG @ KONG AH MOY

HIGH COURT, MUAR
TUAN RICHARD TALALLA J.
[CIVIL SUIT NO. 22-39-1989]
19 JANUARY 1993

LAND LAW: Property in name of defendant - Given to her by her father - Plaintiff claiming that her parents had promised her the property - Whether promise legally binding on defendant - Whether capable of defeating defendant's indefeasible title.

TRUST: Plaintiff claiming defendant holding property on trust - Defendant executing deed of trust in favour of plaintiff - Whether deed of trust voluntarily executed - Whether signed under duress - Whether deed valid.

The defendant is the registered proprietor of land in Grisek (the Land) which was transferred to her by her late father in 1969. The plaintiff, the defendant's sister, claimed that the Land was transferred to the defendant as trustee for the plaintiff and sought an order that the Land be transferred to her absolutely.

The plaintiff also put into evidence a deed of trust (the Deed) signed by the defendant in 1988 in favour of the plaintiff. The defendant claimed that the Deed was signed under duress and counterclaimed for a declaration that the Deed be set aside and for the removal of the caveat lodged by the plaintiff against the title to the Land.

Held:

[1] There was no evidence that at the time the father transferred the Land to the defendant it was being so transferred on trust for the plaintiff. The Land was transferred unconditionally and absolutely at the behest of the father to the defendant.

[2] There was no evidence of agreement between the defendant on the one part and her father or her mother or both of them on the other part, binding in law, whereby the defendant was required by parental direction to transfer and part with the Land and title thereto.

[3] The Deed was signed late at night in surrondings oppresive to the defendant and not conducive to the defendant's will being

exercised freely. The defendant did not sign the Deed voluntarily. The defendant signed the Deed under duress and the Deed was void and of no effect.

[Plaintiff's claim dismissed with costs. Defendant's counterclaim allowed with costs].

Cases referred to:
Yew Phaik Hoon v. Quah Ooi Keat & Anor. [1969] 2 MLJ 32 ***(refd)***
Choo Tiong Hin & Ors. v. Choo Hock Swee [1959] 25 MLJ 67 ***(cit)***
Balfour v. Balfour [1919] 2 KB 571 ***(cit)***
Powell v. Cleland [1948] 1 KB 262 ***(refd)***

Legislation referred to:
Contracts Act 1950
National Land Code 1965, s. 340(1)(2)
Penal Code, s. 503

Other sources referred to:
Shorter Oxford English Dictionary 3rd. Edn. (revised with addenda)

For the plaintiff - M/s. Philip
For the defendant - Chua; M/s. Low & Lee

JUDGMENT

Richard Talalla J:
The defendant is the registered proprietor of approximately 3 $^{1}/_{4}$ acres of rubber land (the Land) in the Mukim of Grisek and has been continuously so since 1969. The Land had been acquired by her father although held by a third party who at the direc-tion of the father had transferred it to the defendant. The plaintiff's pleaded case is that the Land was transferred to the defendant as trustee for the plaintiff who was then an infant as an absolute gift from the father to the plaintiff. In fact the plaintiff was not an infant at the time of the transfer and until 15 April 1988 there was no documentary evidence in any way pointing to there being such a trust. The father was born in 1910, the mother in 1913. They were married in 1928 in China and came to this country in 1935 where they settled in Bukit Gambir here in Muar. They were a family of eight children, five boys and three girls. The father over the years had acquired much landed and other property which in his lifetime he distributed to his children except the plaintiff. The father was a typical conservative Chinese as was the mother. It is not surprising that the greater part of the property went to the sons who each received acreages of land varying from 10 to 20 acres. The eldest daughter received RM10,000 in cash, the defendant was given the Land and another piece of land of about 3 $^{1}/_{2}$ acres in area. The defendant married in 1968 whereafter she moved out of the family home to live with her husband and both she and her husband worked the Land. The plaintiff had left the family home in 1970 whereafter she stayed in Singapore till 1974. Between 1975 and 1987 she lived in Brunei where in 1976 she was married. In 1987 she and her husband returned to live in Muar. The foregoing constitute facts which are either agreed or not disputed.

The plaintiff gave evidence wherein she claimed that the Land belonged to her because her mother told her so. She testified that she was aware that the Land was transferred to the defendant in 1969 but she did not know that then. She said it was her parents' decision. "They do things, they do not have to tell the children," she testified, adding "I am not sure whether in 1969 my parents had any intention of transferring this land to me." She went on to say in evidence, "When my father was alive it was he who controlled the land. After my father passed away my mother was controlling." The father passed away in 1982. Then she testified that two or three years before he passed away the father said the Land belonged to her. In cross-examination the plaintiff said that actually it was the mother's idea to transfer the Land to her and she went on later to testify that her mother said that the Land belonged to her.

The mother gave evidence on behalf of the plaintiff. She said that her husband had transferred two pieces of land to the defendant. She then testified, "Now I say one piece of land was transferred to Kang Ah Lang and the other piece of land was transferred to Kang Ah Lang for her to apply for replanting and later on this piece of land to be transferred to her younger sister". The other piece of land is the land in dispute in this case.

It is not disputed that when the plaintiff and her husband Tan Jee Seng (Tan) returned to Muar from Brunei, Tan worked on the Land. He appeared to have done this at the request of the mother, his mother-in-law. The plaintiff testified that it was the mother who asked him to come back and cultivate it and that he was only following the mother's instruction

The mother herself testified as follows, "I told my son-in-law to work on this land because the land would be transferred to his wife later on by the defendant." Tan testified that the defendant's husband Lai Si Ba (Lai) himself as did the mother encouraged him to go on the Land but then, so Tan testified, Lai indicated that he wanted to sell the Land. That was one year later, in 1988. Tan testified, "He did not indicate it to me directly. He was saying in the Chinese Temple, the Chinese Temple occupied part of the land, that he wanted to sell the land and somebody who heard it told me." Tan went on to say in evidence that when he heard about Lai wanting to sell the Land, he (Tan) had a discussion with the plaintiff whereupon they agreed to seek legal advice. He then consulted a solicitor and obtained from him a form of deed of trust (the Deed) which he handed to a brother of the plaintiff, namely Kang Ah Bah.

The task I have in determining this case is one broadly similar to that facing Azmi J, as he then was, in the case of *Yew Phaik Hoon v. Quah Ooi Keat & Anor.* [1969] 2 MLJ 32, a case which commenced in the High Court sitting at Johor Bahru and ended in the Privy Council.

I reject any evidence suggestive of the father stating at the time the Land was transferred to the defendant that it was being so transferred on trust for the plaintiff. I find that any idea of the property being held on trust was an afterthought generated some 18 years after the Land was transferred to the defendant. I find that the Land was transferred unconditionally and absolutely at the behest of the father to the defendant. I find so on the plaintiff's own evidence when she said that she was not sure whether in 1969 her parents had any intention of transferring the Land to her and that it was her mother's idea to transfer the Land to her.

Being the conservative family they were I believe the plaintiff when she testified that it was the decision of her parents to transfer the Land to the defendant, that they did things without having to tell the children that when the father was alive it was he who controlled the Land and on his passing her mother did so and that it was the mother's idea to transfer the Land to her. That seemed to me the expected state of affairs pertaining to a family such as this one. It appeared to me perfectly natural that the children would have honoured and respected the parents and acceded to their wishes; the father's wishes during his lifetime and thereafter the wishes of the mother. Accordingly notwithstanding that the Land was transferred to the defendant absolutely and unconditionally the defendant would have heeded and indeed did comply with the wishes of her parents in regard to the working of the Land, the sharing of the profits derived therefrom and later, on the father's demise, and when the plaintiff and her husband returned from Brunei the defendant either of her own accord as a dutiful sister and certainly at the bidding of the mother would have agreed to the plaintiff and her husband working on the Land and sharing in the profits. The defendant would have done all these as a dutiful daughter and a grateful one having been given the Land. However, the defendant's willingness or even her feelings of obligation in this regard were not such as emanating from any common intention of the parties concerned to be legally bound. It was only a matter of filial respect and duty. There was no evidence of agreement between the defendant on the one part and her father or her mother or both of them on the other part, binding in law, whereby the defendant was required by parental direction to transfer and part with the Land and title thereto.

Accordingly even if the father later told the plaintiff that the Land belonged to her, which I do not believe he did, that was to no avail. Similarly it did not assist the plaintiff's case that her mother told her likewise. In this respect reliance is placed on the case of *Choo Tiong Hin & Ors. v. Choo Hock Swee* [1959] 25 MLJ 67 at p. 68. See also *Balfour v. Balfour* [1919] 2 KB 571. It had to follow that any question of the father and mother purportedly giving the land to the plaintiff at a subsequent stage does not arise. In any event that is not the plaintiff's pleaded case.

The Land had been charged by the defendant, perhaps at the suggestion of her husband, as security for a loan from a bank in order to enable the defendant and her husband to purchase a dwelling house. Lai, the husband, had apologised to the family for charging the Land. It was the contention of the plaintiff that he had thus acknowledged that the Land did not belong to the defendant but to the

family or by direction of the mother to the plaintiff. The view I take is that Lai not being a member of the family but only related in law yet the head of his own family and the bread-winner was acting naturally and normally in apologising to his wife's family for making use of the wife's property given to her by her father just as much as any self respecting man in his situation belonging to an old fashioned and conservative community would have done. Ordinarily it would have been an affront to his status as family head and humiliating for him to have recourse to his wife's pre-nuptial property in order to produce the necessaries of life. As it turned out the Land was charged solely to provide for a family home. Certainly to my mind such an apology coming from Lai could in no way constitute an admission that the Land belonged to the plaintiff.

I find that it was the mother who invited the plaintiff's husband to return to Muar or on such return to work the Land, probably because he had nothing else to do and to encourage him so the mother took it upon herself to say that the Land belonged to the plaintiff and that eventually it would be transferred to her. I find that the mother supported by other members of the family and especially the son Kang Chin Foh who appeared to me to be of an aggressive and belligerent nature capable of using force, brought pressure to bear on the defendant to transfer the Land to the plaintiff. I find that when the plaintiff's husband began to work on the Land the defendant with her husband in the background had initially no objection, acceding to the mother's wishes, but when the plaintiff and her husband appeared to be getting well entrenched into the Land and when the defendant and her husband began to be pressured by the mother supported by the other members of the family to transfer the Land to the plaintiff, they objected. Matters came to a head when the plaintiff's husband got wind of the defendant's husband's disclosure that he intended to sell the Land. The plaintiff and her husband had to stop such a course. They purported to do so by consulting a solicitor resulting in the Deed being prepared and forced upon the defendant.

The defendant did not pay quit rent and assessment for a period commencing 1986 to 1989. That was because at the direction of the mother the plaintiff and her husband had purported to take over and work the Land. As stated above, the mother had no legal right so to direct. Similarly if the defendant offered the plaintiff any money to purchase the Land from the plaintiff as claimed by the plaintiff, I do not believe that was the case, it was only to maintain the family peace and was not to be construed as an admission that the Land belonged to the plaintiff.

The findings so far have been based on the evidence of the plaintiff and her witnesses. The findings are fortified by the evidence of the defendant and her husband which dovetails into the evidence of the plaintiff and her witnesses. Especially enlightening is the husband's testimony. He testified that Tan began working on the Land, carrying out replanting, and harvested it in October that year. He sold the produce without giving Lai a single cent and that is how the trouble started, Lai complained. He was asked why he stopped working on the Land. The answer was because he had quarrelled with Tan. He was then reminded that it was his wife's land and asked why he left the Land. His answer was that his mother-in-law was siding Tan. He said that if he did not refrain from working on the Land there would have been a quarrel adding, ominously, that something would have happened. He confirmed that he did not pay the quit rent in 1988, because of the quarrelling.

Lai spoke to the profits of the Land being shared with his father-in-law before the latter died and thereafter with his mother-in-law. It was then suggested to him that it was the wish of the mother-in-law as to how much of the profits would be given to the defendant and him. Lai prevaricated and then answered in the affirmative. He also confirmed that the defendant had sought her mother's permission to charge the Land. He was then asked that if the mother had objected would the Land have been charged. Lai again prevaricated, then said the Land was the defendant's and that the defendant would not have listened to the mother because he and the defendant needed the money. It was then suggested to him that that meant the defendant would be disobeying her mother. Again the witness prevaricated, then in frustration and quite illogically he answered in the negative, adding that the Land belonged to his wife, and then, redeeming his situation, he posed the

rhetorical question, "Why should she listen to her mother?" It was clear to me from the evidence as a whole that the defendant and indeed her husband were torn between maintaining the legal right of the defendant to the Land on the one hand and filial respect and obedience, having no legal force or effect, on the other.

It is not in dispute that on 15 April 1988 there was a family gathering in the house of the eldest brother whereat several members of the family including the plaintiff and defendant were present. It is the defendant's case that pressure was brought upon her to sign the Deed, that she gave in to that pressure and eventually did sign the document. She claimed not to have signed it voluntarily. She claimed to have signed it under duress, that she was intimidated into signing it. That was her pleaded defence. The plaintiff's case was to the contrary. The plaintiff claimed that the defendant signed the document voluntarily and it was the plaintiff's case that she was in fact smiling when she signed it. I do not accept the plaintiff's story nor that of her witnesses in speaking to the defendant willingly and voluntarily signing the Deed. As stated the mother gave evidence on behalf of the plaintiff. On the mother's testimony itself, it was clear that the defendant was reluctant to part with the Land. It had to follow that she could not have willingly or voluntarily signed the Deed. The mother was asked in cross-examination. "Why did you wait till 1988, 18 years to get the defendant to sign the agreement ." The answer was, "Long ago, long before that we have discussed about the transfer of the land by Kang Ah Lang to Kang Moi Lan but Kang Ah Lang refused to transfer the land to Kang Moi Lan." The mother went on to repeat, "I asked Kang Ah Lang to transfer the land to Kang Moi Lan but Kang Ah Lang refused to transfer the land to Kang Moi Lan, that is why I have to ask Kang Ah Lang to sign this document." It is true the mother proceeded to add that nobody forced the defendant to sign the document and that the defendant was happy after signing the same. I do not accept as true this part of her testimony. The mother seemed to be blowing hot and cold as indeed was the case in her re-examination when she testified "It is true I wanted my daughter the defendant to sign this document (trust deed) because she has refused to transfer the land to her younger sister." Then unbelievingly she added "At the time the defendant signed the trust deed the defendant willingly signed it. Nobody compelled her to sign the document." Kang Chin Foh, a brother of the parties was called by the plaintiff to testify to the defendant's willingness to sign the Deed. He had advised the defendant to transfer the Land to which she responded by calling him a dog. Counsel then asked whether he agreed that the defendant did not voluntarily sign the agreement. Incredulously he replied that she signed voluntarily. When questioned by Counsel that if she signed the Deed voluntarily why was she calling the witness names, such as a dog, the witness sought to extricate himself by saying that he was on bad terms with the defendant. Like his brother I did not look on this witness as being truthful having considered his evidence as a whole and the manner he gave it.

It has to be recorded that the document was signed late at night in surroundings oppressive to the defendant and certainly not conducive to the defendant's will being exercised freely. If the defendant and her husband were to be believed in regard to what transpired that night, and in this regard I am more inclined to believe them and their witness Lim Kiong than the plaintiff or any of her witnesses, the action of one or more of the persons present especially the brothers Kang Ah Bah and Kang Chin Foh in procuring execution of the Deed amounted to criminal intimidation as defined by s. 503 of the Penal Code.

In effect the plaintiff was relying on the Deed as an admission by the defendant that the defendant held the Land as such for the plaintiff. As I saw it there was no question of contract involved and accordingly the provisions of the Contracts Act 1950 did not apply. Insofar as the Deed was relied on as constituting such an admission, the voluntariness of its execution had to be ascertained. Quite clearly to my mind the execution was suspect. A question which immediately arises is why the transaction was not conducted in the office of the solicitor who drafted the Deed. Surely that would have been the prudent thing to do. That course was not taken. Therefore the inference to be drawn is that if the defendant was taken before the solicitor to sign the Deed and the solicitor then sought to ascertain

whether she was intending to sign the document voluntarily, as the solicitor was bound to do, the answer would have been in the negative.

Another question must also be asked. Why if the defendant was ready and willing to transfer the Land to the plaintiff, was it considered desirable for there to be a deed of trust rather than a memorandum of transfer of the Land in the form prescribed in the National Land Code (the Code)? The answer it seems to me is obvious. The declaration of trust was open to be witnessed by a person without any particular qualification and in the event the witness turned out to be the mother whereas in the case of a memorandum of transfer the defendant's signature would have needed to be attested and in the ordinary course of events it would have been done by an advocate and solicitor. This was not done and so the inference must be drawn that it was not done because attestation by an advocate and solicitor would have been impossible inasmuch as the defendant would not have been a willing signatory to the memorandum of transfer.

Accordingly I find that the Deed was a device foisted on the defendant to procure from her the admission in question. I find the defendant did not sign the deed voluntarily. I find she signed it under duress. It has to follow that the so-called deed of trust is void and of no effect.

It was common ground that no money passed from the defendant when the Land was transferred to her. Yet it was pleaded in the amended defence that the defendant was a *bona fide* purchaser of the Land for valuable consideration and this was relied on by the plaintiff as a contradiction on the part of the defendant upon which I was invited to question the defendant's credibility. I declined to do so. The amended defence was drafted and settled by the solicitors for the defendant. The pleading referred to was a legal technicality and treated as such. As stated in the Shorter Oxford English Dictionary, 3rd Edn., revised with Addenda, a purchaser is one who acquires land or property in any way other than by inheritance. See also the case of *Powell v. Cleland* [1948] 1 KB 262. The Land did not pass to the defendant by way of inheritance. It was transferred to her by her father *inter vivos*, probably in consideration of natural love and affection. Accordingly the pleading appears to be correct. The word "purchaser" is defined in the Code as a person or body who in good faith and for valuable consideration acquires title to, or any interest in land. Whether natural love and affection amounts to valuable consideration does not call for consideration here. Suffice it to say that the pleading has nothing to do with the credibility of the defendant.

The plaintiff has failed to establish her claim as pleaded. I find that the plaintiff has failed to establish any claim at all to the Land the title to which remains indefeasible in the name of the defendant. In this regard see s. 340 (1) of the Code. The plaintiff has not in any way shown the defendant's title to be defeasible and in this respect see subsection (2) of the section last referred to.

Accordingly the plaintiff's claim is dismissed with costs, to be taxed. The defendant by counterclaim having claimed a declaration that the Deed be set aside and that the caveat lodged by the plaintiff against the title to the Land be removed with immediate effect, I order accordingly. The defendant is also to have the costs of the counterclaim.